

**JOINT LEGISLATIVE SUNSET
REVIEW COMMITTEE FINDINGS AND
RECOMMENDATIONS**

**Review and Evaluation of the
Board of Landscape Architects**

**Report to the
Department of Consumer Affairs**

JANUARY 1996

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TABLE OF CONTENTS

| | |
|---|----|
| Summary of Recommendations and Findings | i |
| Overall Approach to the Sunset Review | 1 |
| Summary of Current Regulation | 6 |
| 1. Evaluation of Board's Operations and Programs | |
| A. General Responsibilities, Duties and Powers of the Board | 8 |
| B. Funding and Organization of the Board and Staff | 9 |
| C. Licensing and Application Process | 10 |
| D. Examination Process | 11 |
| E. Continuing Education and Review of Professional Competence | 13 |
| F. Complaint Process | 13 |
| G. Enforcement Process | 14 |
| Unlicensed Activity | |
| Disciplinary Action | |
| H. Efforts to Improve the Current Regulatory Process | 15 |
| Operational Improvements | |
| Legislative Efforts | |
| 2. Review of Need for State Licensing and Regulation of Landscape Architects | 18 |

SUMMARY OF RECOMMENDATIONS AND FINDINGS

ISSUE #1: Should the Board of Landscape Architects be continued as a separate agency, merged with another board, or sunsetted and have all of its duties, powers and functions turned over to the Department of Consumer Affairs?

RECOMMENDATION:

The board should not be continued as a separate agency and all of its duties, powers and functions should be turned over to the Department of Consumer Affairs.

FINDINGS:

A. General Responsibilities, Duties and Powers of the Board

- 1. The board has specified its mission and goals but has not identified any specific objectives for individual programs.*
- 2. The board has not established professional standards for its licensees, nor specific codes of professional ethics or conduct.*

B. Funding and Organization of the Board and Staff

- 1. The board has spent, on average, about 28 percent of its budget on enforcement activity over the past four years. Other boards have spent on average about 66 percent.*
- 2. The organizational breakdown and workload of the board and staff seem to provide the most efficient expenditure of funds. However, the board anticipates an applicant fee increase to cover any increased cost of administering the exam.*

C. Licensing and Application Process

- 1. It has been argued that the board is attempting to stiffen its educational requirement for applicants to the examination and thereby creating an artificial barrier to entry into the profession.*
- 2. The board provides reciprocity for out-of-state landscape architects, but landscape architects licensed in California have difficulty in receiving reciprocity in other states.*

D. Examination Process

1. The board left the national examination (LARE) because it presented unnecessary barriers to entry into the profession. It appears that the current state examination (PELA) also presents significant barriers to entry into the profession.

E. Continuing Education and Review of Professional Competence

1. The board does not have a continuing education requirement nor any sort of professional competence program.

F. Complaint Process

1. There are very few complaints filed against the 3,200 licensed landscape architects, and most of those are from licensees for unlicensed practice rather than from the public.

F. Enforcement Process

Unlicensed Activity

1. No specific data was submitted by the board relative to unlicensed activity, however, the "Annual Reports" submitted by the Department show little use made of the board's "cite and fine" authority.

2. The practice of landscape architecture is not clearly defined so as to determine licensed versus unlicensed activity.

Disciplinary Action

1. The board made little use of its citation authority against licensees for violations of the licensing act.

2. The board has taken little, if any, action against licensees over the past four years for violations of the licensing act.

Operational Improvements

1. The board argues that it's regulatory mission is somewhat impeded by existing statutes which produce ambiguity with regard to practice and impede enforcement of the program. However, it does not appear that the board has taken any action to clarify these exemptions.

2. *The board's administrative and regulatory changes have not improved its operations or increased its ability to operate more in the public interest.*
3. *The board's proposed administrative and regulatory changes do not address some of the basic problems which are identified in this report.*

Legislative Efforts

1. *Legislative efforts by the board have not substantially improved the current regulatory program.*
2. *The board's proposed statutory changes only minimally address some of the basic problems which are identified in this report, and some are concerned with serving the profession rather than the consumer.*

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| ISSUE #2: Should the State continue with the licensing and regulation of landscape architects, and if not, should some other alternative form of regulation be recommended? |
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RECOMMENDATION:

The Department should assure that the licensing and regulation of landscape architects continues, until it has had an opportunity to investigate whether the board's duties, powers, and functions could be combined with another licensing and regulatory program, or whether some other alternative to regulation would suffice.

FINDINGS:

1. *There is a potential for significant harm to the health, safety and welfare of the public as a result of incompetent practice.*
2. *There is a potential for major financial consequences for the consumer as a result of incompetent practice.*
3. *The current regulatory program does not provide any evidence that significant harm could result if the landscape architecture practice was deregulated.*
4. *Although landscape architects make judgments which could have potentially major financial, health, safety or other significant consequences for the consumer, whether harm has ever occurred is more difficult to determine.*

5. *Judgments made by landscape architects do require a high degree of skill and knowledge.*
6. *Judgments made by landscape architects, for the most part, are independent of oversight or supervision by another person or group.*
7. *There is a generally accepted core amount of knowledge, skill and ability that a landscape architect must have to meet minimum competency requirements, and which are measurable by objective, written standards.*
8. *There are other ways in which knowledge, skills and abilities necessary for this occupation can be obtained, but formal education is still considered as the best means to ensure that landscape architects are competent.*
9. *It is unclear what federal, state or local agencies require licensure of a landscape architect to perform work on public projects.*
10. *There does not appear to be any significant public demand for the regulation and licensing of landscape architects.*
11. *Most consumers of landscape architect services are more sophisticated than the average public about purchasing those services, and therefore, can readily evaluate the performance of a landscape architect. Also, there is a "repeat business" dynamic when it comes to the hiring of landscape architects. It is estimated that at least 75% of the business of landscape architects is with a single type of "consumer"-- public agencies.*
12. *There are other ways in which the consumer can control their exposure to the risk of harm.*
13. *There are other public agencies, state or local, which regulate some portion of the services provided by landscape architects.*
14. *There are 45 states which regulate landscape architects, but almost half of those have title acts or certification programs. For those states which do not regulate landscape architects, there is no indication that consumer harm has resulted.*
15. *There is some evidence provided that landscape architects could be impacted economically if no longer licensed, but there is no evidence that deregulation would increase costs to the consumer for services offered.*
16. *This occupation is not clearly distinguishable from other professions which are non-regulated.*
17. *There is some overlap with currently regulated occupations.*

18. There have been other attempts to eliminate the licensing and regulation of landscape architects in California.

19. There may be other alternatives to the current regulatory program which would not require the licensing of landscape architects.

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| ISSUE #3: What changes should be made to the current regulatory program to improve its overall effectiveness and efficiency so that it may operate more in the public interest? |
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RECOMMENDATIONS:

1. Standards for "negligence" and "incompetent practice" should be adopted if the licensing function is to continue. Standards of professional conduct and a code of ethics should also be developed.

2. Adequate justification should be provided for an increase in the examination fee.

3. The Department should review the six-year education and experience requirement to determine if it is justified.

4. The Department should review the current proposed regulatory amendments to the educational requirement, to ensure that they are not creating artificial barriers to entering the profession.

5. The Department should determine whether it should still require that landscape architects pass the "California Professional Examination for Landscape Architects," or whether meeting the educational requirements would suffice.

6. The Department should survey cities and counties to determine if non-licensure would limit a public agency's ability to contract with a landscape architect. The Department should also survey insurance companies to determine if non-licensure would affect the ability of landscape architects to purchase liability insurance.

OVERALL APPROACH TO THE SUNSET REVIEW

CURRENT APPROACH TO REVIEW

Legislation enacted in 1994 (Chapter 908/94, SB 2036, McCorquodale), put in place a procedure and schedule for the Legislature to assess the effectiveness of, or need for, state involvement in the 32 occupational areas currently regulated by various boards. ("Board," as used in this document, refers to a "commission," "committee," "examining committee," or "organization" that has the ultimate responsibility for administration of a regulatory program as required under provisions of the Business and Professions Code.)

Pursuant to this new law, independent boards become inoperative, according to a specified schedule, on July 1 of either 1997, 1998, or 1999. The respective statutes are then repealed six months later, on January 1 of either 1998, 1999, or 2000. Thus, the boards and their regulatory authorities "sunset," unless the Legislature passes laws to either reinstate the board or extend its sunset date.

Chapter 908/94 creates the Joint Legislative Sunset Review Committee (JLSRC) to review and analyze the effectiveness of and need for each of the boards. Each board, with the assistance of the Department of Consumer Affairs (DCA), is required to submit to the JLSRC -- 15 months before January 1, of the year its authorizing legislation becomes operative -- an analysis of its regulatory functions and reasons to continue regulatory activities. (Reports from the boards scheduled to sunset in 1997 were, therefore, due by October 1, 1995.)

The JLSRC must hold public hearings during the interim study recess to solicit testimony from the director of Consumer Affairs, the boards scheduled to sunset, the public, and the regulated industries/occupations. During those hearings, the committee members must evaluate and determine whether a board or regulatory program has demonstrated a public need for the continued existence of the board or regulatory program and for the degree of regulation based on the factors and minimum standards of performance listed below:

- (1) Whether regulation by the board is necessary to protect the public health, safety, and welfare.
- (2) Whether the basis or facts that necessitated the initial licensing or regulation of a practice or profession have changed.
- (3) Whether other conditions have arisen that would warrant increased, decreased, or the same degree of regulation.
- (4) If regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public

interest, considering other available regulatory mechanisms, and whether the board rules enhance the public interest and are within the scope of legislative intent.

(5) Whether the board operates and enforces its regulatory responsibilities in the public interest and whether its regulatory mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resource, and personal matters.

(6) Whether an analysis of board operations indicates that the board performs its statutory duties efficiently and effectively.

(7) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates.

(8) Whether the board and its laws or regulations stimulate or restrict competition, and the extent of the economic impact the board's regulatory practices have on the state's business and technological growth.

(9) Whether complaint, investigation, powers to intervene, and disciplinary procedures adequately protect the public and whether final dispositions of complaints, investigations, restraining orders, and disciplinary actions are in the public interest; or if it is, instead, self-serving to the profession, industry or individuals being regulated by the board.

(10) Whether the scope of practice of the regulated profession or occupation contributes to the highest utilization of personnel and whether entry requirements encourage affirmative action.

(11) Whether administrative and statutory changes are necessary to improve board operations to enhance the public interest.

The JLSRC must also consider alternatives to placing responsibilities and jurisdiction of the board under the Department of Consumer Affairs.

The JLSRC must then report its findings and recommendations to the DCA for its review. The DCA must then prepare a final report including its own findings and recommendations and those of JLSRC. This final report must then be submitted to the Legislature within 60 days, and shall include whether each board scheduled for repeal should be terminated, continued, or re-established, and whether its functions should be revised. If the JLSRC or DCA deems it advisable, the report may include proposed bills to carry out these recommendations.

REQUEST FOR INFORMATION AND BOARD REPORT

As indicated, all boards are required to prepare an analysis and submit a report to the JLSRC "no later than one year plus 90 days prior to the January 1st of the year during which that board shall become inoperative." (October 1, 1995, was the deadline for those boards which sunset in 1997.)

The analysis and report must include, at a minimum, all of the following:

- (a) A comprehensive statement of the board's mission, goals, objectives and legal jurisdiction in protecting the health, safety, and welfare of the public.
- (b) The board's enforcement priorities, complaint and enforcement data, budget expenditures with average- and median-costs per case, and case aging data specific to post and pre-accusation cases at the Attorney General's office.
- (c) The board's fund conditions, sources of revenue, and expenditure categories of the last four fiscal years by program component.
- (d) The board's description of its licensing process including the time and costs required to implement and administer its licensing examination, ownership of the license examination, and passage rate and areas of examination.
- (e) The board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.

In an attempt to reconcile this requirement for information, along with those considerations and factors which the JLSRC must make during its deliberations, a request for information was prepared by JLSRC staff and sent to all boards on July 3, 1995.

The request asked a number of questions about the board's operations and programs, about the continued need to regulate the particular occupation, and about the efforts which the board has made, or should make, to improve its overall efficiency and effectiveness. There was also a specific request for information dealing with the board's funding, licensing, examination, complaint and enforcement process for the past four years.

Staff then continued to meet with boards, as needed, to assist them in compiling this information and completing the report.

The report submitted by each board was broken down into three parts. The first part, provided background information dealing with each aspect of the board's current regulatory program. This included the board's powers, duties and responsibilities, its funding and organization, the licensing, examination, continuing education, and enforcement activities of the board for the past four years.

The second part of the report, addressed the issue of whether there is still a need to regulate this particular occupation. The questions addressed by the board were basically those which are asked during any "sunrise review" process, i.e., the current process used by the Legislature to evaluate the need for regulation.

The third part of the report, discusses any regulatory or legislative efforts the board has made, or are needed, to improve its current operation and protection of the consumer.

There are some appendices which were included as part of their report. There are also appendices (attachments) which, because of their length, or because they were not essential to the overall information contained in the original report, were not

provided with the report. They were, however, available to members of the JLSRC upon request.

JLSRC REPORT OF FINDINGS AND RECOMMENDATIONS

The JLSRC must provide to DCA a report of its findings and recommendations after hearings are completed. This document has been prepared in an attempt to meet that mandate.

The findings and recommendations in this report are based on information and testimony received during the hearings conducted by the JLSRC on November 27th, 28th and December 5th, 1995. It also reflects information which was provided in the board's report, information provided by the Department of Consumer Affairs, a review of the current literature dealing with occupational licensing issues, and a comparative analysis of occupational licensing in other states performed by the Senate Office of Research.

The document begins with a short summary of the current regulatory program and discusses the creation of the licensing act, the board's budget, revenue and fees collected, an overview of licensing activity and the required examination, and disciplinary/enforcement actions.

Part one, provides an overall evaluation of the board's operations and programs. This section includes everything from the general responsibilities and duties of the board, to the licensing, examination and enforcement process. There are findings made about each function and activity of the board.

Part two of this document, is a review of the need to regulate this particular occupation. The issues are those which are addressed during the current "sunrise review" process, and those which must be considered by the JLSRC under the current law.

SUMMARY OF CURRENT REGULATION

Background

- The Board of Landscape Architects was established in 1953. The board is comprised of seven members: three licensed landscape architects appointed by the Governor, and four public members – two appointed by the Governor, one by the Speaker of the Assembly, and one by the Senate Rules Committee. The board licenses some 3,200 landscape architects, according to Department of Consumer Affairs (DCA). (The board shows 4,100 licensees for FY 1994/95.)
- When established in 1953, the original Landscape Architects Law was a title act, providing for the licensing of persons by the board who were then authorized to use the title “landscape architect.” In 1968 the board began to regulate the “practice” of landscape architecture. The board currently regulates both the practice of landscape architecture and the use of the title “landscape architect.”
- The practice of landscape architecture is defined in the landscape architecture law (B&P Code § 5615-5683) to include, “professional services, for the purpose of landscape preservation, development and enhancement, such as consultation, investigation, reconnaissance, research, planning, design, preparation of drawings, construction documents and specifications, and responsible construction observation.” Both unlicensed practice and use of the title “landscape architect” is a misdemeanor. Exemptions to the licensing requirements are extended to those licensed to sell nursery stock under the Food and Agricultural Code, golf course architects, and irrigation consultants.

Budget

- The board’s budget for the current fiscal year (FY 1995-1996) is \$495,000. In FY 1994-1995 the board’s budget appropriation was \$505,000, of which \$142,359 was the total expenditure for all enforcement costs (28% of the total expenditures. The board is authorized for 3 staff positions, including: an executive officer, a management services technician, and a staff services analyst. The board derives its revenues entirely from licensees, and is a special fund agency. Board members receive a per diem of \$100 for attending board meetings, chairing committee meetings, and doing work in a location other than their office or home (per diem totals for the last four years are \$27,700).

| Year | Exams | Licensing | Enforcement | Administration | Budget |
|-----------|-----------|-----------|-------------|----------------|------------------|
| 1995-1994 | \$223,109 | \$70,245 | \$142,359 | \$69,235 | \$505,000 |

| | | | | | |
|------------------|-----------|-----------|-----------|----------|------------------|
| 1994-1993 | \$241,685 | \$76,116 | \$154,213 | \$74,987 | \$547,000 |
| 1993-1992 | \$322,990 | \$117,669 | \$145,141 | n/a | \$586,800 |
| 1992-1991 | \$373,641 | \$101,237 | \$189,712 | n/a | \$664,724 |

Fees

- A landscape architect's license is good for two years. The board has been working on increasing the examination application fee from \$325 to \$425 to bring it closer to the actual examination cost. The board's fee structure is currently:

| | Current fee | Statutory limit |
|--|--------------------|------------------------|
| Exam application | \$325 | \$425 |
| License renewal | \$300 | \$400 |
| Temporary certificate | \$50 | \$100 |
| Duplicate certificate | \$50 | \$50 |
| Failure to notify change of address | \$50 | \$200 |
| Branch office | \$50 | \$50 |

Licenses and Examinations

- To sit for the examination, an applicant must be at least 18 years old and have 6 years of training and educational experience in landscape architecture work. The board has developed regulations to balance the various levels of education and experience required of applicants to sit for the examination.
- The licensing examination (Professional Examination for Landscape Architects, PELA) was developed by the board in 1993, and is validated every 5 to 7 years (see additional comments in Part 2 below).

1.

**EVALUATION OF BOARD'S OPERATIONS
AND PROGRAMS**

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| ISSUE: Should the Board of Landscape Architects be continued as a separate agency, merged with another board, or sunsetted and have all of its duties, powers and functions turned over to the Department of Consumer Affairs? |
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RECOMMENDATION:

The board should not be continued as a separate agency and all of its duties, powers and functions should be turned over to the Department of Consumer Affairs.

FINDINGS:

A. General Responsibilities, Duties and Powers of the Board

1. *The board has specified its mission and goals but has not identified any specific objectives for individual programs.*

- The board states that its mission is to provide consumers with information regarding the use of landscape architects services, and to provide a consumer-oriented enforcement program that addresses violations and grievances efficiently and effectively. The board claims it has the following goals and objectives to achieve this mission: 1) To uphold appropriate eligibility requirements and maintain a legally-defensible exam that appropriately tests minimum competency, but refrains from establishing artificial barriers to entry. 2) To protect consumers in their employment of landscape architect. 3) To upgrade the enforcement program through staff training and more effective and cost efficient disciplinary strategies. 4) To provide critical information to victims of natural disasters to minimize additional damage and expedite their rebuilding.
- Although these goals and objectives are laudable, there is no indication, or evidence provided, that the board has implemented any of them. Nor does the board provide any listing of specific objectives being used to achieve its mission and goals, to make its individual programs more effective and efficient.

- The board claims it has been involved in strategic planning, but again, there are no specific goals or objectives provided for individual programs similar to what other boards have provided to the JLSRC. Nor has the board developed, as yet, policies and procedures which clearly delineate board and staff functions. The board also claims it continually evaluates its overall effectiveness to assure that its mission is achieved, but it has not conducted any type of formal self-assessment or evaluation.
- Finally, while other boards are attempting to adopt certain aspects of performance-based budgeting similar to that used by the Department, the board says it must wait until it receives authority to do so.

2. The board has not established professional standards for its licensees, nor specific codes of professional ethics or conduct.

- The Center for Public Interest Law (CPIL) argues that the board does literally no standard-setting for the practice of landscape architecture in California. According to CPIL, outside of one provision which requires landscape architects to include their license number in advertising, not one board regulation pertains to post-entry standards of conduct.
- The board claims that it is currently working to develop a code of ethics or standards of conduct for the industry which it regulates.

B. Funding and Organization of the Board and Staff

1. The board has spent, on average, about 28 percent of its budget on enforcement activity over the past four years. Other boards have spent, on average, about 66 percent.

2. The organizational breakdown and workload of the board and staff seem to provide the most efficient expenditure of funds. However, the board anticipates an applicant fee increase to cover any increased cost of administering the exam.

- The board is proposing to submit a budget change proposal for a fee increase for administering the exam. However, the exam component of its budget shows the cost of providing exams has been decreasing. There may be other costs associated with providing the PELA exam which the board has not provided to the JLSRC, and would justify the fee increase.

C. Licensing and Application Process

1. It has been argued that the board is attempting to stiffen its educational requirement for applicants to the examination and, thereby, creating an artificial barrier to entry into the profession.

- An applicant must have six years of education and work experience in landscape architecture in order to apply for the licensing examination.
The various combinations of education and experience which satisfy this requirement have been established by regulation. Generally, the regulation requires that at least two years of the six-year requirement be fulfilled with experience under the direct supervision of a licensee; a maximum of four years of the six-year requirement may be satisfied with education.
- The board claims that it has considered alternative requirements for licensure, and that the eligibility requirements have been the subject of many rule-making files to ensure that no barriers to entry exist. Recently, however, the board submitted what it claims as “its most nonrestrictive rule making package to date, which would, in effect, allow licensed landscape contractors up to the four years full work-experience credit if they have completed the minimum, formal-education requirements -- an Associate Science Degree in Landscape Architecture.”
- CPIL argues to the contrary. Instead of amending its educational requirement to enable more applicants to take the exam and become licensed, as represented by the board, it is actually attempting to stiffen its educational requirement. Prior to this amendment to its rules, the board accepted educational degrees in subjects other than landscape architecture as qualifying toward the six-year requirement; it also accepted completion of a portion of a landscape architecture educational program as qualifying toward the six-year requirement. Under the board’s proposed “nonrestrictive” regulation, applicants will be required to complete a degree or certificate in an approved landscape architecture program; no credit will be allowed for the partial completion of a landscape architecture educational program. In other words, the board proposes to stiffen its educational requirement, despite the fact that “the results of the first PELA. . .revealed a higher correlation of work experience to success on the exam than formal education.” CPIL claims that this proposed change will work a severe hardship on those in rural areas who do not have the luxury of moving to a location where a university offers an approved program in landscape architecture (there are only four universities which offer a Bachelor’s or Master’s degree in Landscape Architecture, three which offer courses through an extension school, and six community colleges which offer an AA degree). It would also be a burden on landscape contractors who have many years of directly related experience (including experience under the direct supervision of a landscape architect) but no formal education in landscape architecture.

2. The board provides reciprocity for out-of-state landscape architects, but landscape architects licensed in California have difficulty in receiving reciprocity in other states.

- Since its inception, the board has offered reciprocity to licensees from other states. Applicants must pass a “Reciprocity Exam” which tests the competency of applicants regarding California laws, building codes, plant materials and irrigation design.
- However, California licensees have had difficulty receiving reciprocity in other states. This is due to the fact that in 1993, the California Board of Landscape Architects moved from the national examination which is used in all other states (Landscape Architect Registration Examination – LARE), and administered by the Council of Landscape Architectural Registration Boards (CLARB), to an examination developed solely for the California board (the Professional Examination for Landscape Architects – PELA).
- Since California does not administer a national licensing examination, a number of states do not extend reciprocity to California landscape architects. This is true, even in states which only administer a title act and do not have a practice act. It appears that the use of a separate licensing examination for California presents a serious impediment for licensees in this state who wish to additionally practice in other states (see examination process below).

D. Examination Process

1. The board left the national examination (LARE) because it presented unnecessary barriers to entry into the profession. It appears that the current state examination (PELA) also presents significant barriers to entry into the profession.

- In 1993, the California Board of Landscape Architects began administering a licensing examination developed solely for the California board (the Professional Examination for Landscape Architects – PELA). This change was made because it was felt that the national licensing examination, the LARE administered by CLARB presented an unnecessary barrier to entry into the profession. This is due to the low passage rates under CLARB’s examination (9% in 1991, 23% in 1992), and the feeling that the national examination was not comprehensive, fair and occupationally valid and, therefore, not “legally defensible” (Although it is stated that the LARE is not “legally defensible,” the assertion does not appear to be based upon any state or federal court judgment or upon any written legal opinion).
- Since the board began administering the PELA in 1993, the rate of passage has significantly risen (39% in 1993, 45% in 1994, 44% in 1995), but this is still somewhat low for applicants who are required to have six years of combined education and work experience. The number of applicants has also dropped significantly. The candidate pool has dropped from 500 in 1991, to 150 in 1995. The drop in applicants appears to be because a number of applicants are going to other states to take the LARE examination. They are then able by reciprocity to practice in

California, however, if they took the PELA examination they might not be granted reciprocity to practice in other states.

- Additionally, the drastic drop in applicants for the PELA examination has increased the examination cost per applicant. The board has statutory authority to charge applicants \$425 to take the licensing examination, however the current fees are set at \$325. Although the specific numbers are not available, the actual examination cost per applicant is significantly greater than \$325. Therefore, licensing fees are subsidizing the examination process. In an effort to reduce examination costs, the board has recently moved from offering the PELA examination twice a year to offering it once a year -- thus requiring 60% of the licensure candidates (those candidates who did not pass the exam in spite of having already completed six years of education and training) to wait an entire year before being re-tested.
- Although significant efforts have been made by the board to administer a licensing examination that removes all barriers into the profession, it appears to have produced the unintended effect of : (1) reducing the number of applicants for the examination, (2) turning applicants toward other states to take the licensing examination, (3) reducing the opportunities for applicants to take the California examination, (4) subsidizing the examination with licensing fees, and (5) hindering California licensees who seek reciprocity in other states.
- A return to the LARE would eliminate most of these problems, and is an option which the board has been considering. The board indicates that it has been working with CLARB to help them develop a legally defensible exam which California could adopt. States such as Florida have also written to CLARB insisting on improvements to the LARE, and have threatened to join California if further changes are not implemented. However, until there is proof that the national exam has been significantly revised and other states have had higher pass rates, the state should not return to the use of LARE.
- Colorado recently conducted a “sunrise review” of licensure for landscape architects and decided, for a number of reasons, to not license or otherwise regulate landscape architects. Some of the discussion by their “Joint Legislative Sunrise/Sunset Review Committee” centered on the issue of the LARE exam. They found no need to provide an exam, and indicated that current education and/or work experience obtained was sufficient. They also could not justify the significant expenditure on staff and examination preparation and administration of the LARE, or in providing an exam of their own.

E. Continuing Education and Review of Professional Competence

- 1. The board does not have a continuing education requirement nor any sort of professional competence program.***

- The board indicates it has an interest in exploring the advantages of continuing education for its licensees, and that continual scrutiny and appropriate actions by the State Board will ensure that any increased requirements or regulation are in the public's interest. However, the board has not initiated any sort of program which would require a licensee to demonstrate competence in the newly emerging areas of this field.

F. Complaint Process

1. There are very few complaints filed against the 3,200 licensed landscape architects, and most of those are from licensees for unlicensed practice rather than from the public.

- Over the past four years, only 226 complaints have been received against landscape architects. Of those, 112 have been resolved "informally" -- through mediation by board staff. Thirty-eight (38) of those complaints resulted in formal investigations (investigations referred to the Division of Investigation). The board does not have a toll free number (800 number) for consumers to file complaints.
- Few complaints received by the board are made by consumers, the vast majority are made by licensees relative to unlicensed activity. In FY 1994/95, out of 109 complaints, 7 were from the public and 99 from licensees. In FY 1992/93, out of 59 complaints, 13 were from the public and 44 were from licensees. Most complaints by licensees were for fraud (unlicensed practice) and, in most instances, a cease and desist letter was sent or a violation letter issued.

G. Enforcement Process

Unlicensed Activity

1. No specific data was submitted by the board relative to unlicensed activity, however, the "Annual Reports" submitted by the Department show little use made of the board's "cite and fine" authority.

- The board has had the authority since 1985 to issue citations for unlicensed activity, i.e. unlicensed persons calling themselves landscape architects or actively practicing landscape architecture without a license. It received authority for fines in 1994. The board has issued six citations between July to September of 1995 (FY 1995-1996).
- Apparently, the most common action taken against unlicensed activity is to send a letter to cease and desist, or a letter informing the person of a violation. In the last

four fiscal years the board has sent 101 letters of reprimand or cease and desist, and 120 letters notifying of violations.

2. The practice of landscape architecture is not clearly defined so as to determine licensed versus unlicensed activity.

- The board states that it is difficult under the Practice Act to define what activities constitute the practice of landscape architecture. Further, there are numerous exemptions as to who may legally design landscapes: the homeowner, garden designers, nurseryman, landscape designers, irrigation consultants, engineers, architects, and landscape contractors doing designs as part of their overall jobs. The board has to use an expert witness to determine which tenets of landscape architecture have been violated under the Practice Act.

Disciplinary Action

1. The board made little use of its citation authority against licensees for violations of the licensing act.

- The board has issued only nine citations in the last four fiscal years. Between July to September of 1995 (FY 1995-1996) the board issued six citations, and three in FY 1991-1992. However, no other citations appear on the board's statistical data over this period of time, even though the board has had the authority to issue citations and civil penalties for both licensed and unlicensed violations since 1985 (B&P Code §§ 5677, 5679). The board report states, that the board staff has received training in issuing citations and fines only within the last six months.

2. The board has taken little, if any, action against licensees over the past four years for violations of the licensing act.

- Only four (4) accusations have been filed over the past four years. (The board did not provide information concerning the outcome of these cases. Nor did the board provide information on when these accusations were filed.) It appears that the board did not take a single disciplinary action during the fiscal years of 1991-1992, 1992-1993 or 1994-1995.
- After reviewing such statistics in 1993, the Senate Business and Professions Subcommittee on Efficiency and Effectiveness in State Boards and Commissions concluded: "There appears to be no benefit to the health, safety and welfare of the public by continuing the licensing of landscape architects in this state." The subcommittee felt that there was no track record of an act of irreparable harm due to incompetent landscape architects that warrants a licensure scheme through a state regulatory board. At that time, the subcommittee recommendation was to eliminate the Board of Landscape Architects and its licensure requirements.

H. Efforts to Improve Current Regulatory Process

Operational Improvements

1. *The board argues that its regulatory mission is somewhat impeded by existing statutes which produce ambiguity with regard to practice and impede enforcement of the program. However, it does not appear that the board has taken any action to clarify these exemptions.*

- The board claims that the “practice exemptions,” in the law, allow unqualified persons to practice landscape architecture. However, there is no indication that the board has taken any action to clarify these exemptions. Meeting with other affected groups, if exemptions were eliminated, would be a first step.

2. *The board’s administrative and regulatory changes have not improved its operations or increased its ability to operate more in the public interest.*

- The board cites three instances of improvements in its regulatory program: 1) producing a California licensing exam; 2) the recent rule-making change requiring “formal” education for a landscape architect; and 3) requiring all licensees to list their license number on all ads, letterheads and contracts. As to the first, the board was actually threatened by DCA to adopt its own exam or they would recommend the board be abolished. It was only after this, the board made any effort to adopt its own exam over that of the national exam. As to the second, it has been argued that this “formal” education requirement will create another barrier to entry into this profession and cause greater hardship on students who want to qualify to take the exam. The third appears to help the consumer identify licensed versus unlicensed practice, but it is more self-serving for the profession by trying to curtail competition from those who perform landscape-type activities.

3. *The board’s proposed administrative and regulatory changes do not address some of the basic problems which are identified in this report.*

- The board claims it would like the opportunity to put in place a structure for “performance-based budgeting,” but has taken no steps to review any of those methods currently being used by DCA. The only other administrative and regulatory changes under review by the board are those involving new procedures and technology for better record keeping and accurate public information, and the training of staff in other disciplinary actions such as cite and fine and cease and desist.

Legislative Efforts

1. *Legislative efforts by the board have not substantially improved the current regulatory program.*

The board points out the following as examples of legislative efforts made to improve the current regulatory program:

- Mandate for written contracts and full disclosure between landscape architects and clients.
- Mandate to display license number on all public presentments and instruments of service.
- Amendment of law to allow citations to be issued for violations to agency's regulations (regulations still need to be adopted).

2. The board's proposed statutory changes only minimally address some of the basic problems which are identified in this report, and some are concerned with serving the profession rather than the consumer.

The board is considering the following statutory changes:

- Clarification of definition of landscape architecture and scope of practice. (This could be considered as an attempt to curtail competition rather than make determinations about licensed versus unlicensed activity.)
- Reduce the categories of exemptions in the practice act. (This would be an expansion of the board's regulatory purview and possibly create new licensing categories.)
- Add requirements for continuing education. (Creates an opportunity for the profession to provide courses for a fee, but no evidence provided that will improve competence for landscape architects.)
- Add standards of professional conduct.
- Eliminate loopholes by which severely delinquent licensees (five years or more) can avoid retaking the licensing exam. Eliminate loopholes by which licensees avoid reporting civil judgments to the board.

2.

REVIEW OF NEED FOR STATE LICENSING AND REGULATION OF LANDSCAPE ARCHITECTS

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| ISSUE: Should the State continue with the licensing and regulation of landscape architects, and if not, should some other alternative form of regulation be recommended? |
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RECOMMENDATION:

The Department should assure that the licensing and regulation of landscape architects continues, until it has had an opportunity to investigate whether the board's duties, powers, and functions could be combined with another licensing and regulatory program, or whether some other alternative to regulation would suffice.

FINDINGS:

1. *There is a potential for significant harm to the health, safety and welfare of the public as a result of incompetent practice.*

- The board points out that the primary purpose for hiring a landscape architect is to plan and design exterior spaces in the natural and built environment. Landscape architects develop general conceptual plans, detailed design documents and design guidelines for a wide range of projects including office parks, industrial complexes, residential subdivisions, planned unit developments, and parks.
- The board states that licensing of landscape architects protects a variety of consumers: (1) those who pay for the services – such as federal, state and local governmental agencies, universities and schools, corporations and other private entities; and (2) those who benefit from the product of the services (the end users, often the general public). The end users who are the most vulnerable and, therefore, the most in need of protection are children, the disabled and the elderly.
- The types of harm which could occur are from improperly designed parks and other public use areas where landscape architects “must be sure poisonous plants are not used and that health risks from chemicals are minimized.” Playground facilities, walkways and other “hardscapes” must be designed so that people are protected from falls and other injuries. The board adds that the disastrous urban fires in the state in the recent past, point to the need for strict attention to the use of less flammable

vegetation to reduce fire hazards. Additionally, badly designed landscapes can be responsible for drainage problems, damage to roads, buildings, walkways and slope failures which can result in millions of dollars in damages.

2. There is a potential for major financial consequences for the consumer as a result of incompetent practice.

- According to the board, every decision made by a landscape architect in designing and planning involves finances. An incorrect, uneducated decision can cost significant amounts of money and seriously impact the consumer. Landscape architects often allocate project development dollars (both public and private) which range from several thousands to several millions of dollars. In addition, decisions regarding land use and environmental policy, have potentially major financial and public welfare implications.
- The board cites a Landscape Contractor's Association report that, "goods and services attributed to landscape architecture added \$5 billion to California's economy in 1994 alone."
- Regarding the use of public money on projects designed by landscape architects, the board points out that each year the state spends millions of dollars in creating and embellishing its physical environment. To the extent that tax money is used, these are consumer costs paid by the taxpaying public.

3. The current regulatory program does not provide any evidence that significant harm could result if the landscape architecture practice was deregulated.

- As indicated in the first part of this document, the board's enforcement program is almost non-existent. Enforcement data indicates that incompetence or negligence is second only to fraud as the most common complaint against licensees. However, for the last four fiscal years, the board has received only 19 total complaints in this area. Since no further action was taken by the board, it is difficult to determine if any harm resulted from the incompetence or negligence of the particular landscape architect.

4. Although landscape architects make judgments which could have potentially major financial, health, safety or other significant consequences for the consumer, whether harm has ever occurred is more difficult to determine.

- The board did not provide any examples of where actual harm has occurred because of the inadequate or incompetent judgment of a landscape architect. In a recent "sunrise review" of an application for licensure submitted by the Colorado Chapter of the American Society of Landscape Architects, the application was denied for a number of reasons, but primarily because there was no evidence provided that harm would result, or has occurred, because of work performed by an "unlicensed" and "unregulated" landscape architect. Colorado repealed its landscape architecture law in 1976, and has not regulated landscape architects since that time. Both in 1989 and

more recently in 1995, the profession attempted to gain licensure. In both instances, their Department of Regulatory Agencies found no evidence of harm which had occurred because of the deregulation of landscape architects. Other states are reaching similar conclusions about the licensing and regulation of landscape architects.

5. Judgments made by landscape architects do require a high degree of skill and knowledge.

- Landscape architecture requires knowledge in a broad range of fields. Landscape architects must possess a working knowledge of architecture, civil engineering, and urban planning. The scope of activity requires that an individual hold a degree from a school of landscape architecture as well as acquire experience as an employee under the direct supervision of a licensed landscape architect. The board states that “an individual untrained in the field of landscape architecture would be unable to fully analyze all of the necessary design constraints and from that information develop a reasonable, defensible, sustainable landscape design.”

6. Judgments made by landscape architects, for the most part, are independent of oversight or supervision by another person or group.

- Landscape architects often work in conjunction with other design professionals such as architects and engineers. However, the board states that no other regulated occupation performs activities with the same depth and scope as landscape architects. It is not unusual for a landscape architect to be brought into a project design along with the engineer or architect.
- On corporate projects, landscape architects typically work in conjunction with developers and business managers; on projects for federal, state, county or city agencies, landscape architects often work with project managers.

7. There is a generally accepted core amount of knowledge, skill and ability that a landscape architect must have to meet minimum competency requirements, and which are measurable by objective, written standards.

- In recent years, two separate job analyses have identified the knowledge, skills and abilities required to practice landscape architecture. The board and the Council of Landscape Architectural Registration Boards (CLARB) both contracted for separate job analyses in 1991. Both studies evaluated the degrees to which the subject on the certification examination represent the knowledge, skills and abilities that are required to perform the job.
- The board states that standards for evaluating the practice of landscape architecture are precise, and that current examinations do a thorough job of testing for all the traditional knowledge, skills and abilities that define the current practice of landscape architecture.

8. *There are other ways in which knowledge, skills and abilities necessary for this occupation can be obtained, but formal education is still considered as the best means to ensure that landscape architects are competent.*

- Internships and apprenticeships are used by the profession as an integral part of the formal training in landscape architecture. However, the board points out, the increasing diversity and rapidly changing technical aspects of the field require practitioners to have a formal education in landscape architecture in order to function successfully.

9. *It is unclear what federal, state or local agencies require licensure of a landscape architect to perform work on public projects.*

- The board cites a recent study conducted by the American Society of Landscape Architects, which found that, out of 120 county and city governmental agencies in California surveyed, 107 require a landscape architect to be licensed to work on city or county projects. However, the survey also indicates, that when asked what city or county laws or regulations require licensing, the vast majority of those who responded cited “policy,” rather than a “code” or “ordinance” requirement.
- The board further states: “Most requests for proposals by federal, state and county agencies for landscape architecture services require that respondents be licensed with professional liability insurance.” It remains unclear whether federal agencies require landscape architecture to be performed by a licensed professional in all states, or only in those who have a licensing requirement. The profession argues, that while there is no absolute requirement that landscape architect contractors be licensed for federal projects located in states where no licensure laws are in place, there is more than a tendency for federal contracting officials to select licensed landscape architects for such work. Federal work in states without licensure tends to go to out-of-state landscape architects who can show licensure in another state as a measure of competence.
- In 1995, Colorado performed a survey of counties and municipalities to determine if unlicensed landscape architects were prevented from participating in public works projects. Forty percent of those agencies still used landscape architects as the lead professional in their projects. A similar survey should be done of cities and counties in California to determine if non-licensure would limit a public agencies ability to contract with a landscape architects.

10. *There does not appear to be any significant public demand for the regulation and licensing of landscape architects.*

- Correspondence regarding the current sunset review process has been overwhelmingly from licensees who argue that licensing should be retained in order to be eligible for

federal state and local contracts, and to keep landscape architecture on equal ground with other design professionals (engineers and architects).

- There is no evidence that the public has been concerned about the licensing of landscape architects, since, in most cases, they are not the direct consumers of their services.

11. *Most consumers of landscape architect services are more sophisticated than the average public about purchasing those services, and therefore can readily evaluate the performance of a landscape architect. Also, there is a “repeat business” dynamic when it comes to the hiring of landscape architects. It is estimated that at least 75% of the business of landscape architects is with a single type of “consumer” -- public agencies.*

- It would appear that consumers of landscape architect services are generally more sophisticated than most consumers. They are project managers, developers, construction managers, business managers, large corporations, engineers, architects, and government agencies who are generally capable of judging competence and protecting themselves. It is estimated that at least 75% of the work of landscape architects is for public agencies.
- Depending on their circumstances, clients may have either regular, ongoing, intermittent or one time only business relationships with landscape architects. However, many practitioners have long-standing client-consultant relationships with individuals, businesses, municipalities and public agencies or other design professionals -- a “repeat business” dynamic.
- It was argued in one board meeting, that the real consumer of the landscape architect is the licensed landscape contractor who regularly fixes and corrects the problems which arise from design plans, which in turn costs the contractors money. Contractors do not file complaints with the board because they are afraid of being black-balled by the landscape architect and would lose all of their business.

12. *There are other ways in which the consumer can control their exposure to the risk of harm.*

- As indicated, there is no evidence of actual harm resulting from the practice of landscape architecture in this State (or in those states which do not license landscape architects). In most instances, the only harm which may result would be contractual in nature and monetary damages would be sufficient. If the threatened harm is monetary only, the preferred regulatory alternative for the Legislature has been to require the posting of a bond sufficient to cover any damage which may result to the injured consumer.
- Further, the “repeat business” dynamic of the normal marketplace has considerable force here; no consumer (and primarily public agencies) would return to a landscape

architect who is incompetent, and that landscape architect will eventually go out of business.

13. *There are other public agencies, state or local, which regulate some portion of the services provided by landscape architects.*

- While, as the board states, no other regulated occupation performs activities with the same depth and scope as landscape architects, engineers and architects are design professionals who utilize similar design processes and skills. All of these design professionals design some of the same elements of projects including: hardscapes (roadways, walks), structures (walls, fences, overheads), and grading and drainage (slopes, drainage systems, retaining walls). Engineers and architects are also regulated by state consumer boards.

14. *There are 45 states which regulate landscape architects, but almost half of those have title acts or certification programs. For those states which do not regulate landscape architects, there is no indication that consumer harm has resulted.*

- Landscape architecture is currently regulated in 45 states, according to the American Society of Landscape Architects. Twenty-five (25) states regulate landscape architecture through a practice act (no unqualified individual may perform the work of a landscape architect). Twenty (20) states regulate landscape architecture through a title act or certification program (no person may use the title “landscape architect” without being licensed or “certified landscape architect” without being certified).
- Six (6) states do not license landscape architects. For those states, there appears to be no indication that consumer harm has resulted.
- Three (3) states have at one time deregulated the profession of landscape architecture. Oregon and Wisconsin have both in the past terminated, but later reinstated licensure.
- Of the 45 states that regulate landscape architects, 29 regulate them through an independent board. The other 16 boards regulate landscape architects along with other professions such as architects or engineers, and in some cases, geologists, land surveyors and interior designers.
- A review of other states’ sunset reviews or audits regarding the practice of landscape architects depicts a profession where the need for regulation is continually being questioned. Recent legislative performance audits and sunset reviews of landscape architecture in Colorado, Hawaii, Maryland, Georgia, and Alabama have all recommended to terminate the licensing of landscape architects or refuse licensure of this occupation.

15. *There is some evidence provided that landscape architects could be impacted economically if no longer licensed, but there is no evidence that deregulation would increase costs to the consumer for services offered.*

- Although the overall annual costs spent for landscape architect services in the state were not available, it would seem that direct and indirect consumers would still pay landscape architectural firms the same price for services even if some other regulatory option such as certification were chosen. Since close to 75% of the consumers are public agencies, which bid for the best price on the project, it would appear that the deregulation could increase competition and lower prices; other occupations which perform landscape-type work could be considered for particular public projects. The one hurdle, however, has been the requirement by governmental agencies that landscape architects “seal” (stamp) their projects. The profession argues that public agencies would seek engineers or architects to place their seal on the project, and thus the agency will be paying for two professionals, not one, for the work performed. A simple solution would be to repeal any requirements for a landscape architect to place a seal on their drawings. However, in other states where non-licensure exists, there is no evidence that public agencies were using architects or engineers rather than landscape architects to perform a particular project. There was also no evidence that landscape architects are suffering financially, or that out-of-state firms were setting up in a non-licensure state to take business away from in-state firms on the strength of being licensed elsewhere.
- The profession makes several other arguments about the economic impact to landscape architects if they were no longer licensed:
 - ⇒ Licensure is necessary to keep landscape architects on an equal footing with licensed architects and engineers. Because of the close relationship which landscape architects have with these other professions, and because they may be the lead on a particular project, to license one over another would create an imbalance in the marketplace. Again, there has been no evidence of this in other non-licensure states. However, it is an issue which should be investigated further and may require a review of the architectural and engineering profession before a decision could be reached.
 - ⇒ Landscape architects would be unable to obtain professional liability insurance. Again, there is no evidence from states which do not license landscape architects that liability insurance is unavailable or difficult to obtain. However, this is another issue which should be investigated before a decision to deregulate is reached.
 - ⇒ No reciprocity with other states. It is argued, that refusal to license landscape architects of this state makes them compete on an uneven playing field with respect to out-of-state landscape architects as well as other design professions already here. As mentioned above, there is no indication that this has occurred in non-licensure states. Also, since California has its own exam, reciprocity is a non-issue. Many landscape architects appear to be going to other states to take the national exam, and for those who go to other states, they may still be

required to meet all the requirements of that state along with taking the national exam.

16. *This occupation is not clearly distinguishable from other professions which are non-regulated.*

- The board states that it is difficult to define what activities constitute the practice of landscape architecture. Further, there are numerous exemptions as to who may legally design landscapes: the homeowner, garden designers, nurseryman, landscape designers, golf course architects, and irrigation consultants, doing designs as part of their overall jobs. The board has to use an expert witness to determine which tenets of landscape architecture have been violated under their Practice Act.

17. *There is some overlap with currently regulated occupations.*

- The board points out that landscape architects, architects and engineers all provide design services, and that the services and design process provided by these professions are very much alike. The profession argues that these occupations are part of one system that is being brought closer together by increasing emphasis on teamwork and common technology that has them working together and producing documents that are increasingly put to interchangeable use.
- Licensed landscape contractors also perform similar work, and may be more directly responsible for the completion of the original design prepared by the landscape architect. The harm which may occur to the consumer may be the result of changes in the design work, or inadequate supervision by the landscape architect at the job site. In most instances, the consumer seeks redress from the contractor and not the landscape architect.

18. *There have been other attempts to eliminate the licensing and regulation of landscape architects in California.*

- In 1978, the Department of Consumer Affairs' Regulatory Review Task Force recommended that the Board of Landscape Architects be abolished immediately. There were then legislative attempts made to eliminate the licensing act which failed. Again in 1994, the Senate Business and Professions Subcommittee on Efficiency and Effectiveness in State Boards and Commissions recommended that the licensing act be eliminated, but include a bond requirement and provide certification program which would protect use of the title "landscape architect." Legislation was introduced by the Subcommittee, but it was decided later to allow the board an opportunity to go through the sunset review process in 1995, so a more thorough evaluation could be performed.

19. *There may be other alternatives to the current regulatory program which would not require the licensing of landscape architects.*

- **Total Deregulation.** The board argues that if the profession were deregulated the consumers would have no assurance of a practitioner's competency and no regulatory recourse if harmed; local agencies requiring licensing would have to change codes and requirements. The board also states that if deregulated, practitioners would have difficulty in obtaining errors and omissions insurance and practicing landscape architecture in other states. However, in those states that do not regulate landscape architects, there seems to be no significant public harm. From a review of all of the findings made about the need to license landscape architects, it does not appear that licensure is necessary, but further investigation of certain issues seem warranted.
- **Title Act – Registration or Certification by a State Agency or Private Organization.** Twenty (20) of the 45 states that regulate landscape architecture do so through a title act. California's original Landscape Architects Law was established in 1953 as a title act. It provided for the licensing and regulation of persons who used the title "landscape architect" but did not regulate the "practice" of landscape architecture. Under a title act, landscape architects could be registered (licensed) by a board or other regulatory agency. The agency would enforce only the title of "landscape architect" but not the practice. Under a title act, minimum education and experience could be required.
- An existing association, or private "certifying organization" can be formed, to register or certify all landscape architects. All legitimate groups which represent this occupation may participate in the "certifying organization." Minimum education, experience and examination could be required. The posting of a bond could also be required to provide for monetary damages for injured consumers.
- In cases where consumers cannot easily protect themselves from incompetence, certification and/or registration is generally regarded as a low cost means of protection that permits a high level of flexibility.
- The Department of Consumer Affairs needs to further investigate whether statewide licensure of landscape architects should continue. It should also determine whether the professions of architecture, engineering and landscape architecture should be combined into one board or bureau if licensure is considered necessary, or whether certification and/or registration would suffice.